

Montgomery County Code
Part II. Local Laws, Ordinances, Resolutions, Etc.

Chapter 19, Erosion, Sediment Control and Storm Water Management.

Sec. 19-4. Engineered plans.

- (a) (1) An application for a permit must be accompanied by:
 - a. An erosion and sediment control plan that, where applicable, is approved by the State Department of Natural Resources or Maryland National Capital Park and Planning Commission;
 - b. The permit fee; and
 - c. A performance bond.
- (2) Plans must be prepared and certified by:
 - a. A professional engineer, land surveyor, or architect; or
 - b. Other person qualified and approved by the department.
- (3) Erosion and sediment control plans must be designed in accordance with:
 - a. The provisions of this chapter, regulations, and the standards and specifications; and
 - b. Requirements of the Montgomery Soil Conservation District.
- (b) (1) A copy of the plan must be referred to the district for review of the proposed erosion and sediment control measures.
- (2) The district must notify the department of its recommendations or approval so that the application may be processed in a timely manner.
- (3) A permit must not be issued until the plan is approved by the department and the district.
- (c) (1) The department may waive the requirement for plans or drawings if it finds that the information on the application is sufficient to show that proposed work will conform to the requirements of this chapter.

Montgomery County Code
Part II. Local Laws, Ordinances, Resolutions, Etc.

(2) This waiver must not be construed as waiving the requirements of the district.

Sec. 19-4. Engineered plans. (cont.)

(3) The permittee is bound by conditions of the application, this chapter, and regulations.

(4) Failure to comply with these requirements may result in the department requiring submission and approval of an engineered erosion and sediment control plan.

(d) (1) Utility construction must not take place in Montgomery County until an erosion and sediment control plan is submitted to and approved by the Washington Suburban Sanitary Commission and the department.

(2) A note must be included on that approved plan that requires the utility contractor to repair and maintain in effective condition any erosion and sediment control measures affected by the utility construction.

Sec. 19-10. Performance bond.

(a) The director must, before issuing a permit, require a corporate bond or an irrevocable letter of credit from a financial institution, or a cash bond, a certificate of guarantee, or other instrument, in a form satisfactory to the director and approved by the county attorney. That instrument is conditioned upon the faithful performance of the conditions in the permit, and soil erosion and sediment control measures specified in the permit, within the time specified by the director or within any extension granted by the director. For the purposes of this article, a certificate of guarantee is an instrument issued by an organization or entity that is approved by the director and meets the capitalization and other reasonable criteria as are established by executive regulation including the demonstrated expertise of the issuing organization or its members in erosion and sediment control; the estimated square footage of the land included in the land-disturbing activity to be performed by the permittee; the estimated square footage of the area of all land-disturbing activities guaranteed by the issuing organization or entity; and the incidence of violation of, or otherwise failing to comply with, the provisions of this chapter by all members of the issuing organization or entity. Certificates of guarantee must only be issued by an approved organization or entity or behalf of members in good standing of that organization or entity. Any question as to the eligibility of a permittee to post a certificate of guarantee must be resolved by the director in the sole discretion of

Montgomery County Code
Part II. Local Laws, Ordinances, Resolutions, Etc.

the director. The amount of the bond, irrevocable letter of credit, certificate of guarantee or other instrument required by this section is three hundred dollars (\$300.00) plus two cents (\$0.02) per square foot of the area included in the land-disturbing activity, plus amounts as deemed necessary by the director to secure the costs of improvements required in approved plans, not to exceed a total amount of ten thousand dollars (\$10,000.00). The instruments required under this section may be combined with the instruments required under section 19-32 pertaining to a storm water management facility, so that one (1) instrument may be used to satisfy both requirements. The director

may grant a partial or complete waiver of the bond, letter of credit, certificate of guarantee, or other instrument, upon application, where the director finds minimal impairment of existing surface drainage, minimal erosion hazard, and minimal sedimentation hazard upon any adjacent land or watercourse, and no hazard to human life or property. A corporate bond or letter of credit must be executed and maintained by a financial institution, surety, or guaranty company qualified to do business in this state and must be conditioned upon the faithful performance of the conditions and soil erosion and sediment control measures specified in the permit. A cash bond must be deposited with the director of finance, who must give a receipt for it, reciting that the cash has been deposited in compliance with and subject to the provisions of this section. The bond, letter of credit, certificate of guarantee, or other instrument obligates the permittee, the permittee's executors, administrators, successors and assigns, jointly and severally with the surety or issuing organization or entity and inures to the benefit of the county, its officers, employees, and to any person aggrieved by the permittee's failure to comply with the conditions of the permit. The permittee and the issuing organization or surety must, under the bond, letter of credit, certificate of guarantee, or other instrument, continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses or liabilities which may be incurred or expended by the department to meet the minimum requirements of this chapter.

(b) Whenever the department finds that a default has occurred in the performance of any term or condition of the permit, bond, letter of credit, certificate of guarantee, or other instrument, written notice must be given to the permittee and to the surety or issuing organization or entity. That notice must state the work to be done, the estimated cost, and the period of time deemed by the department to be reasonably necessary for completion of the work.

(c) If a cash bond has been posted, notice of default as provided by the preceding paragraphs must be given to the permittee; and if compliance is not obtained within the time specified, the department must proceed without delay and without further notice or proceedings to use the cash deposited, or any portion of the deposit, to cause the required work to be done by contract or otherwise in the discretion of the director.

Montgomery County Code
Part II. Local Laws, Ordinances, Resolutions, Etc.

(d) In the event of any default in the performance of any term or condition of the permit, bond, letter of credit, certificate of guarantee, or other instrument, the county, the surety, the issuing organization or entity, or any person employed or engaged on its behalf has a right to go upon the site to complete the required work necessary to control erosion and sedimentation to protect properties, watercourses, and persons. In the event the department undertakes this work with the funds from a forfeited cash or corporate bond, letter of credit, certificate of guarantee or other instrument, the funds must be used to pay the cost of contracting, including engineering and administration, for necessary restoration of the site to control erosion and sedimentation within the requirements of the plan, permit, bond, letter of credit, certificate of guarantee, other instrument, or this chapter. If the cost of the work necessary to control erosion and sedimentation or to protect properties, watercourses, and persons exceeds the amount of the cash or corporate bond, letter of credit, certificate of guarantee, or other instrument, the permittee must continue to be firmly bound under a continuing obligation for payment of all excess costs and expenses incurred by the county. The cost and expenses are a lien upon all property and all rights to property, real or personal, of any person liable to pay that cost. The cost is listed on the tax bill and is collected in the manner of ordinary taxes.

(e) A person must not interfere with or obstruct the ingress or egress to or from a site or premises by an authorized representative or agent of any surety, issuing organization or entity, or the department engaged in completing the work required to be performed under the permit or in complying with the terms or conditions of the permit.

(f) A corporate bond, letter of credit, certificate of guarantee, or other instrument remains in full force and effect until a completion certificate is issued pursuant to section 19-14 of this chapter. A cash bond must be returned to the depositor or to the successors or assigns of the depositor upon issuance of a completion certificate for the work in accordance with section 19-14 of this chapter, except any portion that may have been used.

(g) The director immediately must revoke the permit upon failure of any permittee to maintain the bond or certificate of guarantee. If the director finds a violation of an applicable law or regulation by an organization or entity issuing certificates of guarantee, the director may immediately revoke all permits of members of that organization or entity for which a certificate of guarantee is posted, and may post stop work orders wherever applicable until an appropriate bond or other instrument acceptable to the county is substituted for the certificates of guarantee.

Sec. 19-24. On-site requirements; County participation; waivers.

Montgomery County Code
Part II. Local Laws, Ordinances, Resolutions, Etc.

(a) *On-site stormwater management.* A person that receives a building permit or a sediment control permit must provide on-site stormwater management unless the Director waives this requirement.

(b) *County participation.* If the Director of Environmental Protection finds that additional storage capacity in an on-site facility would correct an existing problem or provide sufficient capacity for future development or redevelopment projects, the County may participate financially in the construction of a stormwater management facility. The amount of participation must be determined by the extent to which the facility exceeds on-site stormwater management requirements.

(c) *Waiver.*

(1) An applicant seeking a waiver of any on-site stormwater management requirement must submit a request to the Department in writing in a form acceptable to the Director. The applicant must submit a separate written request for each later addition, extension, or modification to a development that has received a waiver.

(2) The Director may grant a waiver if the applicant shows that existing physical conditions prevent full compliance with any on-site stormwater management requirement.

(3) If a site is an infill development or redevelopment site, the Director may waive channel protection requirements, if:

(A) the planned development or redevelopment project will not increase the impervious surface area on the site; or

(B) runoff from the site will drain through an adequately-sized existing improved storm drain system before discharging into a natural stream channel, without adversely affecting the receiving channel, and the discharge to the storm drain system will not increase erosion in the receiving waters.

(4) The Director may also waive channel protection requirements if:

(A) an off-site facility was designed and constructed to provide the necessary runoff controls for the site; and

(B) the facility's design assures non-erosive conveyance of runoff from the site to the facility.

Montgomery County Code
Part II. Local Laws, Ordinances, Resolutions, Etc.

- (5) The Director may grant a waiver only if:
 - (A) the applicant satisfies criteria established by regulation; and
 - (B) the waiver is consistent with an applicable watershed management plan approved by the Department of Environmental Protection.
- (6) The Director may grant each waiver only on a case-by-case basis. The Director must consider the cumulative effects of all waivers granted in a drainage area or watershed.
- (7) When a waiver is granted, the Director must require the applicant to:
 - (A) provide a monetary contribution;
 - (B) grant an easement or dedicate land for the County to construct a stormwater management facility; or
 - (C) take specific stream or wetland restoration measures.

Sec. 19-66. Enforcement, appeals, waiver.

(a) *Enforcement agreement.* Each final water quality plan must contain an enforceable agreement, including an approved financial security instrument, with the Planning Board and the DPS Director, requiring maintenance of all facilities required by the plan and best management practices monitoring. The financial security instrument may be combined with any other financial security instrument required by this Chapter.

(b) *Transference of responsibility.* Each approved final water quality plan for a residential project must provide that ownership and maintenance of any feature of the water quality plan must not be transferred to a homeowners association or any resident until the DPS Director or the Planning Board, depending on which is the lead agency to review the feature, finds that:

- (1) each feature has been installed in accordance with the specifications shown on the approved plan;
- (2) each feature has been verified, by inspection, monitoring, or otherwise, to have been operational and functioning as designed for a reasonable period of time after

Montgomery County Code
Part II. Local Laws, Ordinances, Resolutions, Etc.

construction of all units and facilities associated with the last phase of the development project. The length of time must not exceed 5 years and must relate to site-specific characteristics and the type and nature of the particular feature; and

(3) homeowners association documents include detailed instructions and a schedule concerning how the facilities and features operate and should be maintained, and assure adequate funding for routine and long term inspections, repair and maintenance of all features shown on the approved plan.

(c) *Appeals.*

(1) An aggrieved person may appeal a final decision by the Planning Board or the DPS Director concerning a final development approval or permit in which the provisions of this Article are applied.

(A) A final decision by the Planning Board occurs when a written opinion concerning a development approval which requires the implementation of a final water quality plan is mailed.

(B) A final decision by the DPS Director occurs when the Department has approved, rejected, issued, modified, or revoked a permit which requires the implementation of a final water quality plan.

(2) An appeal of a final decision by the Planning Board must be filed with the Circuit Court within 30 days after the written opinion is mailed. The DPS Director may intervene as a party in any appeal involving the implementation of a final water quality plan. The Board of Appeals does not have jurisdiction to hear any appeal arising from a final decision by the Planning Board under this Article.

(3) An administrative appeal of a decision by the DPS Director must be filed with the Board of Appeals within 30 days after the decision is made. The Planning Board may present evidence to the Board of Appeals concerning any element of a final water quality plan that relates to its lead agency authority, if relevant to the appeal.

(d) *Event of default.*

(1) Events of default are:

(A) Required stormwater management facilities, erosion and sediment control facilities, or other mitigation techniques have not been installed or maintained in a correct manner.

Montgomery County Code
Part II. Local Laws, Ordinances, Resolutions, Etc.

(B) Monitoring under a best management practices monitoring plan has not been performed or reported as required.

(C) An applicant has not complied with any other requirement of a water quality plan or this Article.

(D) Required fees have not been paid to support a stream monitoring program.

(2) If an event of default occurs, the Planning Board or the DPS Director, as applicable, may, in addition to any other remedy already permitted under this Chapter:

(A) issue an order prohibiting the applicant from performing any further land disturbing activities on any developed or undeveloped phase of the project until the applicant is in compliance, or revoking or suspending a permit under Section 19-9.

(B) issue a citation for a Class A violation. Each day a violation continues is a separate offense.

(C) take any legal action under Section 1-20 or Chapter 50.

(e) *Waiver.*

(1) *Written request.* An applicant may apply for a waiver from this Article or any regulation adopted under it if enforcement would result in undue hardship to the applicant. The application must be directed to either the Planning Board or the DPS Director, as applicable.

(2) *Review and action.* After consulting reviewing agencies and holding a public hearing, the Planning Board or the DPS Director, as applicable, may waive any requirement if the applicant shows by clear and convincing evidence that:

(A) the application of some or all requirements of this Article would result in undue hardship to the applicant because of events or circumstances not caused or facilitated by the applicant;

(B) the applicant would still comply with all applicable federal, state, or county water quality standards; and

(C) the relief sought is the minimum needed to prevent hardship.